

SERVICE DATE – APRIL 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1108X

BLACKLANDS RAILROAD, INC.—DISCONTINUANCE EXEMPTION—  
IN RUSK COUNTY, TEX.

Digest:<sup>1</sup> Blacklands Railroad, Inc. is permitted to stop providing rail service over a 0.9-mile rail line owned by the Rusk County Rural Rail District in Rusk County, Tex.

Decided: April 1, 2013

By petition filed on February 4, 2013, Blacklands Railroad, Inc. (Blacklands) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its lease operations over a 0.9-mile line of railroad owned by the Rusk County Rural Rail District (RCRRD), between milepost 15.2 and milepost 16.1 at Henderson, in Rusk County, Tex. (the Line). Pursuant to 49 U.S.C. § 10502(b), the Board served and published a notice in the Federal Register on February 22, 2013 (78 Fed. Reg. 12,419), instituting an exemption proceeding. No comments were filed in response to the petition. We will grant the exemption subject to standard employee protective conditions.

BACKGROUND

In 2009, Blacklands was authorized to lease and operate the Line. Blacklands R.R.—Lease & Operation Exemption—Rusk Cnty. Rural Rail Dist., FD 35327 (STB served Dec. 11, 2009). In its petition, Blacklands states that it is seeking to discontinue operations over the Line because there are no active or potential rail customers along the Line. According to Blacklands, there has been no local rail traffic on the Line since August 2011, and because the Line is stub-ended, it cannot handle overhead traffic. Blacklands asserts that the last active customer along the Line, a frac sand transloader, relocated its transloading facilities to another site. In addition to a lack of freight rail traffic on the Line, Blacklands maintains that it is seeking to discontinue

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

operations because RCRRD has filed for authority to abandon the Line,<sup>2</sup> and the City of Henderson is seeking to purchase the corridor for a road construction project.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of Blacklands' proposed discontinuance under 49 U.S.C. § 10903 is not necessary here to carry out the rail transportation policy here. By minimizing the administrative expense of the application process, an exemption would expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Consistent with 49 U.S.C. §§ 10101(5) and (9), an exemption would also foster sound economic conditions and encourage efficient management by quickly allowing Blacklands to discontinue its common carrier obligation to provide service over a line that no longer has any active rail customers. Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. No shipper is currently using the Line, and no shipper has opposed the proposed discontinuance. Nevertheless, to ensure that RCRRD and Blacklands' former shipper, the frac sand transloader, are informed of our action, we will require Blacklands to serve a copy of this decision on RCRRD and the former shipper so that it is received by them within five days of the service date of this decision and to certify contemporaneously to us that it has done so.<sup>3</sup>

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because Blacklands seeks a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the Line for continued rail service under 49 U.S.C. § 10904 (although the OFA provisions for a subsidy to provide

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<sup>2</sup> RCRRD filed a petition for exemption to abandon the Line on January 18, 2013. In a decision issued today, the Board has granted that petition. See Rusk Cnty. Rural Rail Dist.—Aban. Exemption—in Rusk Cnty., Tex., AB 1103X (STB served April 3, 2013).

<sup>3</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. This proceeding is also exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by Blacklands of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

2. Blacklands is directed to serve a copy of this decision on RCRRD and on its former shipper, the frac sand transloader, so that they receive a copy within five days after the service date of this decision and to certify to the Board contemporaneously that it has done so.

3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by April 15, 2013, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). Any offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by April 18, 2013. Petitions to reopen must be filed by April 29, 2013.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on May 3, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.